

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	3:08-CR-46
)	(PHILLIPS/SHIRLEY)
ALFREDO BARBA,)	
ALEJANDRO BARBA,)	
VERONICA BELMARES, and)	
REYNALDO QUIREZ,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court, as may be appropriate. On November 17, 2008, Defendant Alfredo Barba (“the Defendant”) filed a Motion to Adopt Certain Motions Filed By Attorney Sean Lewis in Case Number 3:08-CR-030 [Doc. 105]. On November 19, 2008, the Defendant filed a Motion to File the Motion Already Filed [Doc. 106], which sought retroactive permission to file the Motion to Adopt.

The Motion for Leave [Doc. 106] states that the voluminous nature of the discovery in this case, the superseding indictment filed in this case, and the immigrations charges that were pending in another case against the Defendant delayed counsel’s filing of necessary motions, specifically the Motion to Adopt. As an initial matter, the Court finds the Defendant’s Motion for Extension [**Doc. 106**] is well-taken, and it is **GRANTED**. Accordingly, the Court will address the substance of the late-filed Motion to Adopt [Doc. 105].

The Motion to Adopt seeks to adopt four motions that were previously filed in a case, 3:08-CR-030, which contained immigration charges against Defendant (“the immigration case”). Specifically, the Defendant seeks to adopt: (1) Motion to Dismiss Indictment and for Evidentiary Hearing [3:08-CR-030, Doc. 31]; (2) Memorandum in Support of Motion to Dismiss [3:08-CR-030, Doc. 32]; (3) Defendant’s Reply to the Government’s Response to Motion to Dismiss Indictment [3:08-CR-030, Doc. 37]; and (4) Defendant’s Response (Opposition) to the United States’ Motion to Dismiss [3:08-CR-030, Doc. 40].

In the immigration case, the Honorable Thomas A. Varlan, United States District Court Judge, adopted the Report and Recommendation [3:08-CR-030, Doc. 41] of Magistrate Judge Guyton and granted the Government’s Motion to Dismiss [3:08-CR-030, Doc. 39]. Because the Government’s Motion to Dismiss has been granted, the Response to the Motion to Dismiss [Doc. 40] has been addressed on its merits, and it may not be adopted by the Defendant in this case. The other three documents which the Defendant seeks to adopt were not addressed on their merits in the immigration case, and the Report and Recommendation noted that these motions could be refiled in the present case [Doc. 39 at 3-4]. In the interests of judicial economy and developing a comprehensive record in the present case, the Court instructs the Defendant to refile these motions in the present case rather than seeking to adopt them from the previously dismissed immigration case.

Based on the foregoing, the Court finds that the Defendant's Motion to Adopt **[Doc. 105]** is not well-taken, and it is **DENIED**. However, the motion deadline will be extended until **January 6, 2009**, to allow the Defendant to file the three above listed motions from the immigration case in this case, and the Government will be given until **January 13, 2009**, to respond to such motions.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge